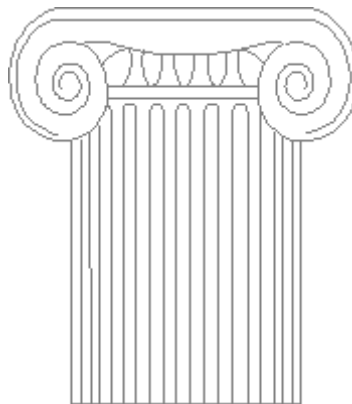


UNITED STATES
BANKRUPTCY APPELLATE PANEL
OF THE TENTH CIRCUIT
LOCAL RULES

EFFECTIVE MARCH 1, 2002

WITH PART VIII OF THE
FEDERAL RULES OF BANKRUPTCY PROCEDURE
AS OF MARCH 1, 2002



UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE TENTH CIRCUIT

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**PART VIII, FEDERAL RULES OF BANKRUPTCY PROCEDURE
WITH THE LOCAL RULES OF THE
UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE TENTH CIRCUIT**

Rule 8001. Manner of Taking Appeal; Voluntary Dismissal

(a) Appeal as of Right; How Taken. An appeal from a judgment, order, or decree of a bankruptcy judge to a district court or bankruptcy appellate panel as permitted by 28 U.S.C. § 158(a)(1) or (a)(2) shall be taken by filing a notice of appeal with the clerk within the time allowed by Rule 8002. An appellant's failure to take any step other than timely filing a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the district court or bankruptcy appellate panel deems appropriate, which may include dismissal of the appeal. The notice of appeal shall (1) conform substantially to the appropriate Official Form, (2) contain the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their respective attorneys, and (3) be accompanied by the prescribed fee. Each appellant shall file a sufficient number of copies of the notice of appeal to enable the clerk to comply promptly with Rule 8004.

(b) Appeal by Leave; How Taken. An appeal from an interlocutory judgment, order, or decree of a bankruptcy judge as permitted by 28 U.S.C. § 158(a)(3) shall be taken by filing a notice of appeal, as prescribed in subdivision (a) of this rule, accompanied by a motion for leave to appeal prepared in accordance with Rule 8003 and with proof of service in accordance with Rule 8008.

(c) Voluntary Dismissal.

(1) Before Docketing. If an appeal has not been docketed, the appeal may be dismissed by the bankruptcy judge on the filing of a stipulation for dismissal signed by all the parties, or on motion and notice by the appellant.

(2) After Docketing. If an appeal has been docketed and the parties to the appeal sign and file with the clerk of the district court or the clerk of the bankruptcy appellate panel an agreement that the appeal be dismissed and pay any court costs or fees that may be due, the clerk of the district court or the clerk of the bankruptcy appellate panel shall enter an order dismissing the appeal. An appeal may also be dismissed on motion of the appellant on terms and conditions fixed by the district court or bankruptcy appellate panel.

(d) [Abrogated]

(e) Election to Have Appeal Heard by District Court Instead of Bankruptcy Appellate Panel. An election to have an appeal heard by the district court under 28 U.S.C. § 158(c)(1) may be made only by a statement of election contained in a separate writing filed within the time prescribed by 28 U.S.C. § 158(c)(1).

L. R. 8001-1. Statement of Election

An appellant's statement of election to have its appeal heard in the district court under 28 U.S.C. § 158(c)(1)(A) and Fed. R. Bankr. P. 8001(e) must be filed with the bankruptcy court. Any other party electing to have the appeal heard in the district court under 28 U.S.C. § 158(c)(1)(B) must file its statement of election with this court. A cross-appellant seeking to have its appeal and the appellant's appeal heard in the district court must file a separate statement of election in each appeal.

Rule 8002. Time for Filing Notice of Appeal

(a) Ten-day Period. The notice of appeal shall be filed with the clerk within 10 days of the date of the entry of the judgment, order, or decree appealed from. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 10 days of the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this rule, whichever period last expires. A notice of appeal filed after the announcement of a decision or order but before entry of the judgment, order, or decree shall be treated as filed after such entry and on the day thereof. If a notice of appeal is mistakenly filed with the district court or the bankruptcy appellate panel, the clerk of the district court or the clerk of the bankruptcy appellate panel shall note thereon the date on which it was received and transmit it to the clerk and it shall be deemed filed with the clerk on the date so noted.

(b) Effect of Motion on Time for Appeal. If any party makes a timely motion of a type specified immediately below, the time for appeal for all parties runs from the entry of the order disposing of the last such motion outstanding. This provision applies to a timely motion:

- (1) to amend or make additional findings of fact under Rule 7052, whether or not granting the motion would alter the judgment;
- (2) to alter or amend the judgment under Rule 9023;
- (3) for a new trial under Rule 9023; or
- (4) for relief under Rule 9024 if the motion is filed no later than 10 days after the entry of judgment. A notice of appeal filed after announcement or entry of the

judgment, order, or decree but before disposition of any of the above motions is ineffective to appeal from the judgment, order, or decree, or part thereof, specified in the notice of appeal, until the entry of the order disposing of the last such motion outstanding. Appellate review of an order disposing of any of the above motions requires the party, in compliance with Rule 8001, to amend a previously filed notice of appeal. A party intending to challenge an alteration or amendment of the judgment, order, or decree shall file a notice, or an amended notice, of appeal within the time prescribed by this Rule 8002 measured from the entry of the order disposing of the last such motion outstanding. No additional fees will be required for filing an amended notice.

(c) Extension of Time for Appeal.

(1) The bankruptcy judge may extend the time for filing the notice of appeal by any party, unless the judgment, order, or decree appealed from:

(A) grants relief from an automatic stay under § 362, § 922, § 1201, or § 1301;

(B) authorizes the sale or lease of property or the use of cash collateral under § 363;

(C) authorizes the obtaining of credit under § 364;

(D) authorizes the assumption or assignment of an executory contract or unexpired lease under § 365;

(E) approves a disclosure statement under § 1125; or

(F) confirms a plan under § 943, § 1129, § 1225, or § 1325 of the Code.

(2) A request to extend the time for filing a notice of appeal must be made by written motion filed before the time for filing a notice of appeal has expired, except that such a motion filed not later than 20 days after the expiration of the time for filing a notice of appeal may be granted upon a showing of excusable neglect. An extension of time for filing a notice of appeal may not exceed 20 days from the expiration of the time for filing a notice of appeal otherwise prescribed by this rule or 10 days from the date of entry of the order granting the motion, whichever is later.

Rule 8003. Leave to Appeal

(a) Content of Motion; Answer. A motion for leave to appeal under 28 U.S.C. § 158(a) shall contain: (1) a statement of the facts necessary to an understanding of the questions to be presented by the appeal; (2) a statement of those questions and of the relief sought; (3) a statement of the reasons why an appeal should be granted; and (4) a copy of the judgment, order, or decree complained of and of any opinion or memorandum relating thereto. Within 10 days after service of the motion, an adverse party may file with the clerk an answer in opposition.

(b) Transmittal; Determination of Motion. The clerk shall transmit the notice of appeal, the motion for leave to appeal and any answer thereto to the clerk of the district court or the clerk of the bankruptcy appellate panel as soon as all parties have filed answers or the time for filing an answer has expired. The motion and answer shall be submitted without oral argument unless otherwise ordered.

(c) Appeal Improperly Taken Regarded as a Motion for Leave to Appeal. If a required motion for leave to appeal is not filed, but a notice of appeal is timely filed, the district court or bankruptcy appellate panel may grant leave to appeal or direct that a motion for leave to appeal be filed. The district court or the bankruptcy appellate panel may also deny leave to appeal but in so doing shall consider the notice of appeal as a motion for leave to appeal. Unless an order directing that a motion for leave to appeal be filed provides otherwise, the motion shall be filed within 10 days of entry of the order.

Rule 8004. Service of the Notice of Appeal

The clerk shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant or, if a party is not represented by counsel, to the party's last known address. Failure to serve notice shall not affect the validity of the appeal. The clerk shall note on each copy served the date of the filing of the notice of appeal and shall note in the docket the names of the parties to whom copies are mailed and the date of the mailing. The clerk shall forthwith transmit to the United States trustee a copy of the notice of appeal, but failure to transmit such notice shall not affect the validity of the appeal.

Rule 8005. Stay Pending Appeal

A motion for a stay of the judgment, order, or decree of a bankruptcy judge, for approval of a supersedeas bond, or for other relief pending appeal must ordinarily be presented to the bankruptcy judge in the first instance. Notwithstanding Rule 7062 but subject to the power of the district court and the bankruptcy appellate panel reserved hereinafter, the

bankruptcy judge may suspend or order the continuation of other proceedings in the case under the Code or make any other appropriate order during the pendency of an appeal on such terms as will protect the rights of all parties in interest. A motion for such relief, or for modification or termination of relief granted by a bankruptcy judge, may be made to the district court or the bankruptcy appellate panel, but the motion shall show why the relief, modification, or termination was not obtained from the bankruptcy judge. The district court or the bankruptcy appellate panel may condition the relief it grants under this rule on the filing of a bond or other appropriate security with the bankruptcy court. When an appeal is taken by a trustee, a bond or other appropriate security may be required, but when an appeal is taken by the United States or an officer or agency thereof or by direction of any department of the Government of the United States a bond or other security shall not be required.

L. R. 8005-1. Stay Pending Appeal

- (a) ***Motion.*** *A motion for stay pending appeal under Fed. R. Bankr. P. 8005 must:*

 - (1) *state whether any party to the appeal opposes the relief sought; and*
 - (2) *state whether the motion was first presented to the bankruptcy court; if not, the motion must explain why it was not presented.*
- (b) ***Appendix.*** *The motion must be accompanied by an appendix containing the following:*

 - (1) *a copy of the bankruptcy court's order denying a motion for stay or a copy of the transcript of the bankruptcy court's hearing on the motion, unless the motion was not first presented to the bankruptcy court; and*
 - (2) *a copy of any paper filed in the bankruptcy court that is needed to decide the motion.*
- (c) ***Emergency Motion.*** *If the motion is an emergency motion, the moving party must also comply with Fed. R. Bankr. P. 8011(d) and 10th Cir. BAP L.R. 8011-2.*

Rule 8006. Record and Issues on Appeal

Within 10 days after filing the notice of appeal as provided by Rule 8001(a), entry of an order granting leave to appeal, or entry of an order disposing of the last timely motion outstanding of a type specified in Rule 8002(b), whichever is later, the appellant shall file with the clerk and serve on the appellee a designation of the items to be included in the record on appeal and a statement of the issues to be presented. Within 10 days after the service of the appellant's statement the appellee may file and serve on the appellant a

designation of additional items to be included in the record on appeal and, if the appellee has filed a cross appeal, the appellee as cross appellant shall file and serve a statement of the issues to be presented on the cross appeal and a designation of additional items to be included in the record. A cross appellee may, within 10 days of service of the cross appellant's statement, file and serve on the cross appellant a designation of additional items to be included in the record. The record on appeal shall include the items so designated by the parties, the notice of appeal, the judgment, order, or decree appealed from, and any opinion, findings of fact, and conclusions of law of the court. Any party filing a designation of the items to be included in the record shall provide to the clerk a copy of the items designated or, if the party fails to provide the copy, the clerk shall prepare the copy at the party's expense. If the record designated by any party includes a transcript of any proceeding or a part thereof, the party shall, immediately after filing the designation, deliver to the reporter and file with the clerk a written request for the transcript and make satisfactory arrangements for payment of its cost. All parties shall take any other action necessary to enable the clerk to assemble and transmit the record.

L. R. 8006-1. Record and Issues on Appeal

- (a) Copies of Items in Record.*** *Once a party has designated the record on appeal in accordance with Fed R. Bankr. P. 8006, the party should not provide a copy of the designated items to the bankruptcy court. The record must be brought before this court in the appendices required by Fed. R. Bankr. P. 8009(b) and 10th Cir. BAP L. R. 8009-1(b).*
- (b) Copy of Designation of Record and Statement of Issues.*** *A party who files a designation of record or statement of issues with the bankruptcy court must file a copy with this court within 10 days after the date of the notice that the appeal has been docketed with this court.*

Rule 8007. Completion and Transmission of the Record; Docketing of the Appeal

(a) Duty of Reporter to Prepare and File Transcript. On receipt of a request for a transcript, the reporter shall acknowledge on the request the date it was received and the date on which the reporter expects to have the transcript completed and shall transmit the request, so endorsed, to the clerk or the clerk of the bankruptcy appellate panel. On completion of the transcript the reporter shall file it with the clerk and, if appropriate, notify the clerk of the bankruptcy appellate panel. If the transcript cannot be completed within 30 days of receipt of the request the reporter shall seek an extension of time from the clerk or the clerk of the bankruptcy appellate panel and the action of the clerk shall be entered in the docket and the parties notified. If the reporter does not file the transcript within the time allowed, the clerk or the clerk of the bankruptcy appellate panel shall notify the bankruptcy judge.

(b) Duty of Clerk to Transmit Copy of Record; Docketing of Appeal. When the record is complete for purposes of appeal, the clerk shall transmit a copy thereof forthwith to the clerk of the district court or the clerk of the bankruptcy appellate panel. On receipt of the transmission the clerk of the district court or the clerk of the bankruptcy appellate panel shall enter the appeal in the docket and give notice promptly to all parties to the judgment, order, or decree appealed from of the date on which the appeal was docketed. If the bankruptcy appellate panel directs that additional copies of the record be furnished, the clerk of the bankruptcy appellate panel shall notify the appellant and, if the appellant fails to provide the copies, the clerk shall prepare the copies at the expense of the appellant.

(c) Record for Preliminary Hearing. If prior to the time the record is transmitted a party moves in the district court or before the bankruptcy appellate panel for dismissal, for a stay pending appeal, for additional security on the bond on appeal or on a supersedeas bond, or for any intermediate order, the clerk at the request of any party to the appeal shall transmit to the clerk of the district court or the clerk of the bankruptcy appellate panel a copy of the parts of the record as any party to the appeal shall designate.

L. R. 8007-1. Transmission of the Record

- (a) Preliminary Transmission.** *Promptly after a notice of appeal is filed, the bankruptcy court clerk must transmit to the bankruptcy appellate panel clerk a copy of the following:*
- (1) the bankruptcy court docket entries in the case and the adversary proceeding, if applicable;*
 - (2) the notice of appeal;*
 - (3) any motion to extend time to file the notice of appeal and the order disposing of the motion;*
 - (4) the bankruptcy court's judgment or order being appealed and any written findings and conclusions or opinion of the bankruptcy court; and*
 - (5) any post-judgment motion regarding the appealed judgment or order and any order disposing of the motion.*
- (b) Supplemental Transmission.** *After the preliminary transmission has been sent:*
- (1) if any motion regarding the appealed judgment or order is filed, the bankruptcy court clerk must transmit to the bankruptcy appellate panel clerk a copy of the motion, any order disposing of the motion, and the related docket entries; and*
 - (2) if any statement of election to have the appeal heard in the district court is filed, the bankruptcy court clerk must transmit to the bankruptcy appellate panel clerk a copy of the statement of election.*

- (c) ***Facsimile or Electronic Transmission Preferred.*** *The bankruptcy court clerk should send the preliminary transmission and any supplemental transmission by facsimile or electronic transmission.*
- (d) ***Transmission of the Record.*** *Compliance with this rule constitutes transmission of the record on appeal under Fed. R. Bankr. P. 8007(b).*

Rule 8008. Filing and Service

(a) Filing. Papers required or permitted to be filed with the clerk of the district court or the clerk of the bankruptcy appellate panel may be filed by mail addressed to the clerk, but filing is not timely unless the papers are received by the clerk within the time fixed for filing, except that briefs are deemed filed on the day of mailing. An original and one copy of all papers shall be filed when an appeal is to the district court; an original and three copies shall be filed when an appeal is to a bankruptcy appellate panel. The district court or bankruptcy appellate panel may require that additional copies be furnished. Rule 5005(a)(2) applies to papers filed with the clerk of the district court or the clerk of the bankruptcy appellate panel if filing by electronic means is authorized by local rule promulgated pursuant to Rule 8018.

(b) Service of All Papers Required. Copies of all papers filed by any party and not required by these rules to be served by the clerk of the district court or the clerk of the bankruptcy appellate panel shall, at or before the time of filing, be served by the party or a person acting for the party on all other parties to the appeal. Service on a party represented by counsel shall be made on counsel.

(c) Manner of Service. Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.

(d) Proof of Service. Papers presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. The clerk of the district court or the clerk of the bankruptcy appellate panel may permit papers to be filed without acknowledgment or proof of service but shall require the acknowledgment or proof of service to be filed promptly thereafter.

L. R. 8008-1. Filing and Service

- (a) ***“Mail” Defined.*** *As used in Fed. R. Bankr. P. 8008, the term “mail” includes:*
 - (1) *first-class mail;*
 - (2) *any other class of mail that is at least as expeditious as first-class*

- mail; or*
- (3) *dispatch to a third-party commercial carrier for delivery within 3 calendar days.*
- (b) **Number of Copies.** *A party must file an original and three copies of a brief or an appendix to a brief. A party may file only an original of any other paper.*
- (c) **Manner of Service.** *Service on a party should be by a manner at least as expeditious as the manner used to file the paper with this court.*
- (d) **Facsimile Filing.** *Any paper other than a brief or an appendix to a brief may be filed by facsimile. The facsimile is considered the original paper. The facsimile is filed on the date that it is received by this court. If the facsimile is received on a Saturday, Sunday, or legal holiday, it is filed as of the next business day. A party should call the bankruptcy appellate panel clerk before sending a facsimile that exceeds 50 pages.*
- (e) **Electronic Filing.** *Any paper may be filed electronically or on electronic media only when authorized in advance by the bankruptcy appellate panel clerk.*
- (f) **Electronic Service.** *Service by electronic means may be made on a party who has consented to such service. Service by electronic means is complete on transmission, unless the party making service is notified that the paper was not received by the party served. If a party has made service by electronic means, the proof of service required by Fed. R. Bankr. P. 8008(d) must state that the party being served consented to service by electronic means and must contain the e-mail address of the party being served. Parties who have consented to electronic service must immediately inform all other parties to the appeal of any change in e-mail address.*

Rule 8009. Briefs and Appendix; Filing and Service

(a) Briefs. Unless the district court or the bankruptcy appellate panel by local rule or by order excuses the filing of briefs or specifies different time limits:

- (1) The appellant shall serve and file a brief within 15 days after entry of the appeal on the docket pursuant to Rule 8007.
- (2) The appellee shall serve and file a brief within 15 days after service of the brief of appellant. If the appellee has filed a cross appeal, the brief of the appellee shall contain the issues and argument pertinent to the cross appeal, denominated as such, and the response to the brief of the appellant.

(3) The appellant may serve and file a reply brief within 10 days after service of the brief of the appellee, and if the appellee has cross-appealed, the appellee may file and serve a reply brief to the response of the appellant to the issues presented in the cross appeal within 10 days after service of the reply brief of the appellant. No further briefs may be filed except with leave of the district court or the bankruptcy appellate panel.

(b) Appendix to Brief. If the appeal is to a bankruptcy appellate panel, the appellant shall serve and file with the appellant's brief excerpts of the record as an appendix, which shall include the following:

- (1) The complaint and answer or other equivalent pleadings;
- (2) Any pretrial order;
- (3) The judgment, order, or decree from which the appeal is taken;
- (4) Any other orders relevant to the appeal;
- (5) The opinion, findings of fact, or conclusions of law filed or delivered orally by the court and citations of the opinion if published;
- (6) Any motion and response on which the court rendered decision;
- (7) The notice of appeal;
- (8) The relevant entries in the bankruptcy docket; and
- (9) The transcript or portion thereof, if so required by a rule of the bankruptcy appellate panel.

An appellee may also serve and file an appendix which contains material required to be included by the appellant but omitted by appellant.

L. R. 8009-1. Briefs and Appendix

(a) Appellant's Brief. *The appellant's brief must be filed within 45 days after the date of the notice that the appeal has been docketed with this court.*

(b) Appendix.

- (1) Form.** *The appendix must be separate from the brief and must be firmly bound along the left margin. Papers in the appendix should be reproduced on 8½" x 11", white, opaque, unglazed paper, with*

printing on only one side of the page.

- (2) **Cover.** *The appendix must have a cover page containing the following:*

 - (A) the case caption;*
 - (B) the title “Appendix,” with the name of the filing party; and*
 - (C) counsel or a pro se party’s name and address and, if available, telephone and facsimile number.*
- (3) **Table of Contents.** *The appendix must be paginated and must include a table of contents.*
- (4) **Order of Papers.** *The relevant bankruptcy court docket entries must be the first papers in the appendix. Copies of papers filed with the bankruptcy court should be arranged in chronological order according to the filed date, with any exhibit or transcript included as of the date of the hearing.*
- (5) **Transcripts.** *The appendix must contain all transcripts, or portions of transcripts, necessary for the court’s review.*
- (6) **Bankruptcy Court’s File Stamp.** *Copies of all papers included in the appendix must show the bankruptcy court’s mechanical or digital file stamp, or equivalent evidence of filing with the bankruptcy court.*
- (7) **Multiple Parties.** *If multiple parties file separate briefs, they may file separate appendices; however, parties should not duplicate items included in a previously-filed appendix and may adopt the items by reference.*
- (8) **Exemptions.** *If papers to be included in an appendix are not susceptible of copying, or are so voluminous that copying is excessively burdensome or costly, a party should file a motion to exempt the papers from the appendix and file them separately.*
- (9) **Sealed Papers.** *Copies of papers filed under seal with the bankruptcy court should be included in an addendum to the appendix, accompanied by a motion to place the papers under seal with this court.*

Rule 8010. Form of Briefs; Length

(a) Form of Briefs. Unless the district court or the bankruptcy appellate panel by local rule otherwise provides, the form of brief shall be as follows:

(1) *Brief of the appellant.* The brief of the appellant shall contain under appropriate headings and in the order here indicated:

(A) A table of contents, with page references, and a table of cases alphabetically arranged, statutes and other authorities cited, with references to the pages of the brief where they are cited.

(B) A statement of the basis of appellate jurisdiction.

(C) A statement of the issues presented and the applicable standard of appellate review.

(D) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of the proceedings, and the disposition in the court below. There shall follow a statement of the facts relevant to the issues presented for review, with appropriate references to the record.

(E) An argument. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on.

(F) A short conclusion stating the precise relief sought.

(2) *Brief of the appellee.* The brief of the appellee shall conform to the requirements of paragraph (1)(A)-(E) of this subdivision, except that a statement of the basis of appellate jurisdiction, of the issues, or of the case need not be made unless the appellee is dissatisfied with the statement of the appellant.

(b) Reproduction of Statutes, Rules, Regulations, or Similar Material. If determination of the issues presented requires reference to the Code or other statutes, rules, regulations, or similar material, relevant parts thereof shall be reproduced in the brief or in an addendum or they may be supplied to the court in pamphlet form.

(c) Length of Briefs. Unless the district court or the bankruptcy appellate panel by local rule or order otherwise provides, principal briefs shall not exceed 50 pages, and reply briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, or similar material.

L. R. 8010-1. Form of Briefs

(a) Paper. Paper must be 8½" x 11", white, opaque and unglazed, with

printing on only one side of the page, and briefs must be firmly bound along the left margin.

- (b) Cover.** *A cover must contain the following:*

 - (1) the case caption;*
 - (2) the title “Brief,” with the name of the filing party;*
 - (3) counsel or a pro se party’s name and address and, if available, telephone and facsimile number; and*
 - (4) a statement of whether oral argument is requested.*
- (c) Text.** *Word processor or typewriter text must be no smaller than a 12-point font and, except for indented quoted material and footnotes, must be double-spaced. Each page must have 1” margins on all sides, with no text other than page numbers appearing within the margins.*
- (d) References to Appendix.** *References to papers in an appendix must be to pages of the appendix (e.g., Appellant App. at 27, or Appellee Supp. App. at 14).*
- (e) Statement of Reasons for Oral Argument.** *If oral argument is requested, a statement of the reasons why argument is necessary must follow the conclusion.*
- (f) Statement of Related Cases.** *A party who knows of a related case pending before the United States Supreme Court or any United States Court of Appeals, District Court, or Bankruptcy Appellate Panel must include as the last page of its brief a statement listing the related case(s). A related case is one that involves substantially the same litigants and substantially the same fact pattern or legal issues as the pending appeal.*
- (g) Length of Brief.** *The Statement of Reasons for Oral Argument and the Statement of Related Cases are excluded from the page limits in Fed. R. Bankr. P. 8010(c).*
- (h) Length of Amicus Brief.** *An amicus brief must not exceed 20 pages without leave of court.*

Rule 8011. Motions

(a) Content of Motions; Response; Reply. A request for an order or other relief shall be made by filing with the clerk of the district court or the clerk of the bankruptcy appellate panel a motion for such order or relief with proof of service on all other parties to the appeal. The motion shall contain or be accompanied by any matter required by a specific provision of these rules governing such a motion, shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. If a

motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. Any party may file a response in opposition to a motion other than one for a procedural order within seven days after service of the motion, but the district court or the bankruptcy appellate panel may shorten or extend the time for responding to any motion.

(b) Determination of Motions for Procedural Orders. Notwithstanding subdivision (a) of this rule, motions for procedural orders, including any motion under Rule 9006, may be acted on at any time, without awaiting a response thereto and without hearing. Any party adversely affected by such action may move for reconsideration, vacation, or modification of the action.

(c) Determination of All Motions. All motions will be decided without oral argument unless the court orders otherwise. A motion for a stay, or for other emergency relief may be denied if not presented promptly.

(d) Emergency Motions. Whenever a movant requests expedited action on a motion on the ground that, to avoid irreparable harm, relief is needed in less time than would normally be required for the district court or bankruptcy appellate panel to receive and consider a response, the word “Emergency” shall precede the title of the motion. The motion shall be accompanied by an affidavit setting forth the nature of the emergency. The motion shall state whether all grounds advanced in support thereof were submitted to the bankruptcy judge and, if any grounds relied on were not submitted, why the motion should not be remanded to the bankruptcy judge for reconsideration. The motion shall include the office addresses and telephone numbers of moving and opposing counsel and shall be served pursuant to Rule 8008. Prior to filing the motion, the movant shall make every practicable effort to notify opposing counsel in time for counsel to respond to the motion. The affidavit accompanying the motion shall also state when and how opposing counsel was notified or if opposing counsel was not notified why it was not practicable to do so.

(e) Power of a Single Judge to Entertain Motions. A single judge of a bankruptcy appellate panel may grant or deny any request for relief which under these rules may properly be sought by motion, except that a single judge may not dismiss or otherwise decide an appeal or a motion for leave to appeal. The action of a single judge may be reviewed by the panel.

L. R. 8011-1. Motions

(a) *Statement Regarding Opposition.* *A motion must state whether any party to the appeal opposes the relief sought.*

(b) *Facsimile Number.* *A motion must include the facsimile number of the person signing it, unless that person does not have a facsimile machine.*

- (c) **Reply.** *If a response to a motion is filed, the movant may file a reply to the response within 5 days after service of the response. The court will not consider any further response or reply without leave of court.*

L. R. 8011-2. Emergency Motions

- (a) **Notice.** *Before filing an emergency motion, the movant must give the bankruptcy appellate panel clerk as much advance notice as possible. Emergency motions, appendices, and responses must be filed and served by the quickest method available.*
- (b) **Facsimile Number.** *An emergency motion must include the facsimile number of the person signing it and the facsimile number of all other parties to the appeal, unless a party does not have a facsimile machine.*
- (c) **Appendix.** *An appendix must be served and filed with the motion and must include a copy of the following:*
- (1) *the notice of appeal;*
 - (2) *the judgment, order, or decree from which the appeal is taken; and*
 - (3) *any other paper filed with the bankruptcy court that is needed to decide the motion.*

Rule 8012. Oral Argument

Oral argument shall be allowed in all cases unless the district judge or the judges of the bankruptcy appellate panel unanimously determine after examination of the briefs and record, or appendix to the brief, that oral argument is not needed. Any party shall have an opportunity to file a statement setting forth the reason why oral argument should be allowed. Oral argument will not be allowed if (1) the appeal is frivolous; (2) the dispositive issue or set of issues has been recently authoritatively decided; or (3) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

L. R. 8012-1. Oral Argument

- (a) **Telephone or Video Conference.** *A party may request, or the court may determine, that oral argument be conducted telephonically or by video conference.*
- (b) **Change of Date or Place of Hearings.** *After the date of the notice of oral argument, the date or place assigned for hearing will not be changed without leave of court.*
- (c) **Failure to File Brief.** *An appellee who has not filed a brief may not*

participate in oral argument without leave of court.

Rule 8013. Disposition of Appeal; Weight Accorded Bankruptcy Judge's Findings of Fact

On an appeal the district court or bankruptcy appellate panel may affirm, modify, or reverse a bankruptcy judge's judgment, order, or decree or remand with instructions for further proceedings. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witnesses.

Rule 8014. Costs

Except as otherwise provided by law, agreed to by the parties, or ordered by the district court or the bankruptcy appellate panel, costs shall be taxed against the losing party on an appeal. If a judgment is affirmed or reversed in part, or is vacated, costs shall be allowed only as ordered by the court. Costs incurred in the production of copies of briefs, the appendices, and the record and in the preparation and transmission of the record, the cost of the reporter's transcript, if necessary for the determination of the appeal, the premiums paid for cost of supersedeas bonds or other bonds to preserve rights pending appeal and the fee for filing the notice of appeal shall be taxed by the clerk as costs of the appeal in favor of the party entitled to costs under this rule.

Rule 8015. Motion for Rehearing

Unless the district court or the bankruptcy appellate panel by local rule or by court order otherwise provides, a motion for rehearing may be filed within 10 days after entry of the judgment of the district court or the bankruptcy appellate panel. If a timely motion for rehearing is filed, the time for appeal to the court of appeals for all parties shall run from the entry of the order denying rehearing or the entry of a subsequent judgment.

L. R. 8015-1. Motion for Rehearing

This court will consider only one motion for rehearing from any party to the appeal.

Rule 8016. Duties of Clerk of District Court and Bankruptcy Appellate Panel

(a) Entry of Judgment. The clerk of the district court or the clerk of the bankruptcy appellate panel shall prepare, sign and enter the judgment following receipt of the

opinion of the court or the appellate panel or, if there is no opinion, following the instruction of the court or the appellate panel. The notation of a judgment in the docket constitutes entry of judgment.

(b) Notice of Orders or Judgments; Return of Record. Immediately on the entry of a judgment or order the clerk of the district court or the clerk of the bankruptcy appellate panel shall transmit a notice of the entry to each party to the appeal, to the United States trustee, and to the clerk, together with a copy of any opinion respecting the judgment or order, and shall make a note of the transmission in the docket. Original papers transmitted as the record on appeal shall be returned to the clerk on disposition of the appeal.

L. R. 8016-1. Bankruptcy Appellate Panel Clerk Authorized to Act on Certain Motions

Subject to review by the court, the bankruptcy appellate panel clerk may act on any of the following motions:

- (a) To extend time to file a paper or perform an act required by these rules or Fed. R. Bankr. P. 8006, 8007, 8009, 8011, or 8014;*
- (b) To supplement or correct a paper filed with this court;*
- (c) To consolidate appeals;*
- (d) To substitute parties;*
- (e) To appear as amicus curiae;*
- (f) To expedite or continue cases;*
- (g) To substitute counsel, or to allow counsel who has entered an appearance to withdraw;*
- (h) To voluntarily dismiss an appeal;*
- (i) To exempt papers from an appendix under 10th Cir. BAP L.R. 8009-1(b)(8);*
- (j) To place papers under seal under 10th Cir. BAP L.R. 8009-1(b)(9); and*
- (k) Any other motion the court may authorize.*

L. R. 8016-2. Entry of an Order

An order is entered when it is noted on the docket.

L. R. 8016-3. Mandate

- (a) *Mandate.*** *A certified copy of this court’s order or judgment and a copy of any opinion constitutes the mandate.*
- (b) *Issue Date.*** *This court’s mandate must issue immediately after the time to file a motion for rehearing expires, unless the mandate is stayed under subsection (c) of this rule or the court shortens or enlarges the time.*
- (c) *Stay of Mandate.*** *Unless this court orders otherwise, the mandate is stayed until the court resolves the following:*

 - (1) a timely-filed motion for rehearing;*
 - (2) a motion for stay of judgment under Fed. R. Bankr. P. 8017(b) that is filed before the mandate is issued; or*
 - (3) a motion to stay the mandate that is filed before the mandate is issued.*
- (d) *Issue After Stay.*** *If this court stays its mandate pending appeal, the mandate must issue immediately after this court files the mandate from the appellate court.*

Rule 8017. Stay of Judgment of District Court or Bankruptcy Appellate Panel

- (a) Automatic Stay of Judgment on Appeal.** Judgments of the district court or the bankruptcy appellate panel are stayed until the expiration of 10 days after entry, unless otherwise ordered by the district court or the bankruptcy appellate panel.
- (b) Stay Pending Appeal to the Court of Appeals.** On motion and notice to the parties to the appeal, the district court or the bankruptcy appellate panel may stay its judgment pending an appeal to the court of appeals. The stay shall not extend beyond 30 days after the entry of the judgment of the district court or the bankruptcy appellate panel unless the period is extended for cause shown. If before the expiration of a stay entered pursuant to this subdivision there is an appeal to the court of appeals by the party who obtained the stay, the stay shall continue until final disposition by the court of appeals. A bond or other security may be required as a condition to the grant or continuation of a stay of the judgment. A bond or other security may be required if a trustee obtains a stay but a bond or security shall not be required if a stay is obtained by the United States or an officer or agency thereof or at the direction of any department of the Government of the United States.
- (c) Power of Court of Appeals Not Limited.** This rule does not limit the power of a court of appeals or any judge thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of

the judgment subsequently to be entered.

Rule 8018. Rules by Circuit Councils and District Courts; Procedure When There is No Controlling Law

(a) Local Rules by Circuit Councils and District Courts.

(1) Circuit councils which have authorized bankruptcy appellate panels pursuant to 28 U.S.C. § 158(b) and the district courts may, acting by a majority of the judges of the council or district court, make and amend rules governing practice and procedure for appeals from orders or judgments of bankruptcy judges to the respective bankruptcy appellate panel or district court consistent with--but not duplicative of--Acts of Congress and the rules of this Part VIII. Local rules shall conform to any uniform numbering system prescribed by the Judicial Conference of the United States. Rule 83 F.R.Civ.P. governs the procedure for making and amending rules to govern appeals.

(2) A local rule imposing a requirement of form shall not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement.

(b) Procedure When There is No Controlling Law. A bankruptcy appellate panel or district judge may regulate practice in any manner consistent with federal law, these rules, Official Forms, and local rules of the circuit council or district court. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, Official Forms, or the local rules of the circuit council or district court unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

L. R. 8018-1. Entry of Appearance and Admission to Practice

(a) *Notice of Appearance.* *An attorney who represents a party in an appeal, and who is not identified in the notice of appeal or a notice of substitution of attorney, should immediately file and serve a notice of appearance containing the attorney's name, address, telephone number, and facsimile number.*

(b) *Appearance.* *Notwithstanding the previous subsection, an attorney who authorizes his or her name to appear on a paper filed with this court has entered an appearance. An attorney who has entered an appearance may not withdraw without leave of court.*

(c) *Admission.* *An attorney is admitted to practice before this court if the*

attorney is:

- (1) *admitted to practice by and a member in good standing of the United States Court of Appeals for the Tenth Circuit;*
- (2) *admitted to practice by and a member in good standing of a United States District Court within the Tenth Circuit; or*
- (3) *admitted to practice by a United States Bankruptcy Court in the case or proceeding on appeal.*

(d) ***Student Practice.*** *A law student may appear before this court after the following conditions are satisfied:*

- (1) ***Qualifications of Student.*** *The student must:*
 - (A) *be enrolled and in good standing in a law school accredited by the American Bar Association, or a recent law school graduate awaiting the first bar examination after the student's graduation or the result of that examination;*
 - (B) *have completed the equivalent of 4 semesters of legal studies; and*
 - (C) *be familiar with the Federal Rules of Bankruptcy Procedure, the American Bar Association Code of Professional Responsibility, and the rules of this court;*
- (2) ***Consent of Party.*** *The party must state that it consents to the law student's appearance on its behalf, and the statement must be filed with this court; and*
- (3) ***Supervising Attorney.*** *An attorney who is admitted to practice before this court must supervise the student. The supervising attorney must:*
 - (A) *assume personal professional responsibility for the quality of the student's work;*
 - (B) *guide and assist the student as necessary or appropriate under the circumstances;*
 - (C) *sign all papers filed with this court;*
 - (D) *appear with the student in any oral presentations before this court;*
 - (E) *supplement any written or oral statement made by the student to this court or other parties to the appeal if this court so requests; and*
 - (F) *file with this court a written certification that the student meets the qualifications of this rule and the attorney has agreed to supervise the student in accordance with this rule.*

L. R. 8018-2. Discipline

Any judge of this court may discipline attorneys and parties as provided in the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure and may refer a disciplinary matter to the appropriate authority.

L. R. 8018-3. Statement of Interested Parties

- (a) Statement.** *All parties, other than governmental parties, must file a statement disclosing any interested party who is not listed in the notice of appeal. If there is none, a statement to that effect must be filed.*
- (b) Interested Party.** *The term “interested party” includes all persons, associations, firms, partnerships, corporations, guarantors, insurers, affiliates, or other legal entities that are financially interested in the outcome of the appeal.*
- (c) Corporations.** *When a corporation is a party to an appeal, the Statement of Interested Parties must identify any parent corporation and any publicly held corporation that owns 10% or more of its stock or state that there is no such corporation.*
- (d) Prior Attorneys.** *The Statement of Interested Parties must include the names of attorneys who have previously appeared for a party in the case or proceeding below but who have not entered an appearance in this court.*
- (e) Generic Description.** *An individual listing is not necessary if a large group of persons or firms can be specified by a generic description.*
- (f) Time of Filing.** *The Statement of Interested Parties must be filed within 10 days after the date of the notice that the appeal has been docketed with this court, or when a party files a motion with this court, whichever is earlier.*
- (g) Obligation to Amend.** *A party who learns that an otherwise undisclosed party is an interested party must immediately file an amended statement.*

L. R. 8018-4. Diligent Prosecution of Appeals

- (a) Reporting Changes.** *Counsel or pro se parties must immediately file with this court a statement of any address, telephone number, or facsimile number changes.*

- (b) **Dismissal for Failure to Prosecute.** *When an appellant fails to comply with these rules or the Federal Rules of Bankruptcy Procedure, the bankruptcy appellate panel clerk may, after notice and on order to show cause, enter an order dismissing the appeal.*

L. R. 8018-5. Courtroom Photography, Television and Radio Broadcasts

For the purposes of the September 1994 resolution of the Judicial Conference of the United States, which prohibits taking photographs in the courtroom or its environs in connection with any judicial proceedings, the environs of this court's courtrooms include the courtrooms utilized by this court, this court's clerk's office, and any hallways in the immediate vicinity of those courtrooms and office. Using radio, television, or other means for live or delayed broadcasting is forbidden in areas from which photography is excluded.

L. R. 8018-6. Citation of this Court's Unpublished Decisions

- (a) **Not Precedent.** *This court's unpublished decisions are not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.*
- (b) **Limits on Use.** *A party may refer to an unpublished decision of this court only if:*
- (1) *the decision has persuasive value with respect to a material issue that has not been addressed in a published opinion;*
 - (2) *the decision would assist the court in its disposition; and*
 - (3) *the party attaches a copy of the decision to any paper that cites it.*

L. R. 8018-7. Certification of Questions of State Law

- (a) **Certification and Stay.** *When state law permits, this court may certify a state law question to that state's highest court in accordance with that court's rules and may stay the case to await the state court's decision.*
- (b) **Motion.** *Certification may be raised on motion of a party or on this court's own motion. A party seeking certification must file a separate motion no later than with its first brief.*

L. R. 8018-8. Case Involving Constitutional Question

- (a) **Written Notice Required.** *Within 10 days after the date of the notice that the appeal has been docketed with this court, a party must file a written notice with this court if the party:*

- (1) *questions the constitutionality of an Act of Congress in a proceeding in which the United States or its agency, officer, or employee is not a party in an official capacity; or*
 - (2) *questions the constitutionality of a state statute in a proceeding in which the state's attorney general is not a party in an official capacity.*
- (b) ***Bankruptcy Appellate Panel Clerk Certification.*** *If a written notice is filed, the bankruptcy appellate panel clerk must certify that fact to the appropriate attorney general.*
 - (c) ***Time Period to Appear.*** *An attorney general may appear in the appeal within 30 days after the date that the bankruptcy appellate panel clerk serves its certification.*

L. R. 8018-9. Supplemental Authority

- (a) ***Letter.*** *If pertinent and significant authorities come to a party's attention after the party's brief has been filed or after oral argument, but before this court's issuance of a decision, the party should promptly file a letter addressed to this court setting forth the citations to such authorities. The letter must not exceed two pages.*
- (b) ***Response.*** *Any response to the letter must be made by letter addressed to this court, must not exceed two pages, and must be filed and served within 5 days after service of the original letter.*

L. R. 8018-10. Calculation of Time

- (a) ***Application of Fed. R. Bankr. P. 9006.*** *Unless otherwise specified, Fed. R. Bankr. P. 9006(a), (b), (c), (e), and (f) apply to appeals before this court.*
- (b) ***Legal Holiday.*** *"Legal holiday," as defined in Fed. R. Bankr. P. 9006(a), includes any day appointed as a holiday by the state in which the this court's clerk's office is located or the state of the district in which the matter originated.*

L. R. 8018-11. Applicable Rules

- (a) ***Application of the Federal Rules of Bankruptcy Procedure.*** *Unless otherwise altered or suspended by these rules or by court order, Part VIII of the Federal Rules of Bankruptcy Procedure and all relevant Official Forms apply to proceedings in this court.*

- (b) ***Application of the Federal Rules of Appellate Procedure.*** *In cases in which Part VIII of the Federal Rules of Bankruptcy Procedure and these rules are silent as to a particular manner of practice, the court may order application of the Federal Rules of Appellate Procedure or the Tenth Circuit Rules.*

L. R. 8018-12. Citation and Effective Date of These Rules

- (a) ***Citation.*** *These rules may be cited as follows: 10th Cir. BAP L.R. ____.*
- (b) ***Effective Date.*** *These rules are effective March 1, 2002.*

Rule 8019. Suspension of Rules in Part VIII

In the interest of expediting decision or for other cause, the district court or the bankruptcy appellate panel may suspend the requirements or provisions of the rules in Part VIII, except Rules 8001, 8002, and 8013, and may order proceedings in accordance with the direction.

Rule 8020. Damages and Costs for Frivolous Appeal

If a district court or bankruptcy appellate panel determines that an appeal from an order, judgment, or decree of a bankruptcy judge is frivolous, it may, after a separately filed motion or notice from the district court or bankruptcy appellate panel and reasonable opportunity to respond, award just damages and single or double costs to the appellee.